

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 881 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DARBAR BALUJI KANTHAJI

Versus

STATE OF GUJARAT

Appearance:

MR. MJ BUDHBHATTI FOR MR. PM THAKKAR for Petitioners
MR. YF MEHTA, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 11/12/96

ORAL JUDGEMENT: (Per Gokhale,J.)

1. This is an appeal against the judgment delivered by the learned Additional Sessions Judge, Mehsana, in Sessions Case No.53 of 1988. All the three appellants herein were the accused in that case and they were all tried under Section 302 read with Section 34, I.P.C. The

learned Judge found each of them guilty of the offence and sentenced them for rigorous imprisonment for life and fine of Rs.500/-, and in default thereof, further R.I. for one month.

2. The charge against the appellants-accused was that, on 14th December, 1987, at about 5.30 P.M., the accused Nos. 1 and 2 carried Dharia and accused No.3 carried spear (called Barchhi) and attacked one Shivasinh Pratapsinh, who was aged about 25 years with an intention to kill him. The motive for the attack was alleged to be the theft of tyres allegedly done by Shivasinh earlier. The incident took place at village Mankanaj in taluka and district Mehsana. The injured was initially treated at Mehsana and was, thereafter, brought to Ahmedabad for further treatment where he died in the morning of 16th December, 1987.

3. The principal witnesses examined by the prosecution were Kunwarsinh Pratapsinh (P.W.1), brother of the deceased, Kubersinh Pratapsinh (P.W.5) and one Babusinh Ramsinh(P.W.6). The complaint is lodged by P.W.1-Kuvarsinh Pratapsinh. The complainant deposed that, on that day, he was returning from his place of work at about 5.30 P.M., when on the outskirts of the village, the kids playing over there informed him that his brother is being beaten near a lake. On rushing over there, he saw the three accused armed as described above beating Shivasinh Pratapsinh. On noticing Kuvarsinh approaching them, the assailants ran away. On inquiring with Shivasinh, Kuvarsinh was informed that these three accused had attacked him for his alleged involvement in the theft of tyres. Kuvarsinh brought him to their residence. Thereafter, the Police were informed on phone by the other brother Kubersinh (P.W.5). The injured was rushed to Mehsana for medical treatment and, subsequently, since that was not sufficient, he was brought to Ahmedabad for further treatment, where he died in the morning of 16th December, 1987.

4. Kubersinh (P.W.5) and Babusinh (P.W.6) have deposed that, on that day, at about 5'o clock, when they returned home after their work, they learnt from the children who were playing that their brother had been beaten and is brought home. On visiting the place, they saw Shivasinh lying on a cot in a pool of blood. On inquiring, Shivasinh stated that the three accused had hit him with arms as stated above.

5. The doctor, who examined the injured person in Mehsana, namely, Dr. Indrakant N. Rajwadia(P.W.3)

stated that, when he examined he injured was conscious and he could speak, though he was vomiting all the time. He mentioned, principally, five injuries, which were as follows :-

- (1) Injury behind the head.
- (2) Injury behind the left ear.
- (3) Injury on the left arm.
- (4) A cut on the right rear side of the neck.
- (5) Injury on the left leg.

6. Dr. Ravindra Deshmukh, who performed the post-mortem in Ahmedabad, in his detailed report (Ex.12), mentioned the injuries which had been caused on the deceased. The neck was cut right across and the cut was 13" long. He deposed that the injury and the consequent internal injuries were sufficient to cause death in normal course of nature. The doctor, in his deposition before the Trial Court, has specifically stated that the injuries were such which must have taken at least four persons to cause the injuries (paragraph 12 of his deposition, which is recorded at Ex.11).

7. In view of the medical evidence, it is quite clear that serious injuries were caused to the deceased. Mr. Budhbhatti for the accused-appellants tried to contend that the original message which was given for lodging complaint on telephone mentioned only the name of accused No.3-Darbar Manaji Kanthaji. However, the station diary entry Ex.46 records that the names of the assailants informed were Manaji Kanthji, etc. It is also material to note that the deceased was conscious for quite some time and gave the names of these three very persons to his brother, who rushed to the site, namely, Kuvarsinh as also the other person who visited him at his residence, namely, Kuversinh (P.W.5) and Babusinh(P.W.6). Mr. Budhbhatti tried to contend that the two accused other than Manaji are falsely implicated. However, there is no reason shown nor any enmity indicated as to why the other two persons will be involved by the deceased. He has so stated consistently to a number of persons. The medical evidence also clearly states and which is confirmed by Dr. Deshmukh that the injuries were such that the injured could speak for some time after receiving these injuries. Dr. Rajwadia (P.W.3), who treated the injured in the Civil Hospital at Mehsana has in terms stated that when he treated the injured at about 7.45 P.M. on 14.12.1987, he was conscious and was speaking.

8. In view of the above discussion, if the

submission of Mr. Budhbhatti is accepted, it would mean that the deceased allowed the real assailants to escape while involving some others. We do not find any reason or justification to accept such a theory nor has the learned Sessions Judge accepted it. We do not find any error whatsoever in the judgment of the Trial Court. The appeal , therefore, stands dismissed.

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